

James Johnson, Esq. - 09-09-04

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

OLIVIA Y, By and
Through Her Next Friend,
James D. Johnson, et al.

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:04CV25LN

HALEY BARBOUR, As Governor
Of the State of Mississippi;
DONALD TAYLOR, as Executive
Director of the Department of
Human Services; and BILLY MANGOLD,
As Director of the Division of
Children's Services

DEFENDANTS

DEPOSITION OF JAMES D. JOHNSON, ESQ.

Taken at the instance of the Defendant at the
offices of Bradley Arant, LLP, One Jackson Place,
188 E. Capitol Street, Suite 450, Jackson,
Mississippi, on Thursday, September 9, 2004,
beginning at approximately 8:09 a.m.

APPEARANCES:

ERIC E. THOMPSON, ESQ.
SHIRIM NOTHENBERG, ESQ.
Children's Rights, Inc.
404 Park Avenue South
New York, NY 10016

COPY

COUNSEL FOR PLAINTIFFS



James Johnson, Esq. - 09-09-04

BETTY A. MALLETT, ESQ.
 McGlinchey Stafford, PLLC
 Skytel Centre South, Suite 1100
 200 South Lamar Street
 Jackson, Mississippi 39201

COUNSEL FOR DEFENDANTS

Reported By: Julie Brown, CSR #1587
 Brooks Court Reporting
 Post Office Box 2632
 Jackson, Mississippi 39207
 (601) 362-1995

Page 4

1 JAMES D. JOHNSON, ESQ.,
 2 having been first duly sworn, was examined and
 3 testified as follows:

4 EXAMINATION BY MS. MALLETT:

5 Q. This is the deposition of Mr. James D.
 6 Johnson in this matter, Olivia Y, et al. versus
 7 Haley Barbour, et al. The witness has been sworn.
 8 I'm Betty Mallett representing the defendants in
 9 this case. And I understand that, Mr. Johnson, that
 10 we have other lawyers here. We will allow them to
 11 identify themselves.

12 MR. THOMPSON: For the record, Eric
 13 Thompson, Children's Rights for plaintiffs, attorney
 14 for the plaintiffs.

15 MS. NOTHENBERG: Shirim Nothenberg for
 16 plaintiffs.

17 Q. (By Ms. Mallett) Mr. Johnson, this
 18 deposition is taken pursuant to the Federal Rules of
 19 Civil Procedure. I'm sure you're aware of all of
 20 that. And I'm just going to have his notice of
 21 deposition marked as an exhibit.

22 (Exhibit 6 marked for identification.)

23 Q. Mr. Johnson, again, I'm Betty Mallett
 24 representing the defendants. Will you please give
 25 me your full name?

Page 3

Page 5

INDEX

PAGE

Appearances 1

1 A. James Dewitt, D-E-W-I-T-T, Johnson.

2 Q. What is your address?

3 A. I'm in Hattiesburg at 103 Dovercliff
 4 Road.

5 Q. And you're an attorney; is that correct?

6 A. That's correct.

7 Q. Can you give me a little bit of
 8 information about your educational background?

9 A. Graduated U S M in 1973 with a degree in
 10 political science. And then graduated from
 11 Mississippi College School of Law in 1978.

12 Q. Okay?

13 A. With a Juris Doctorate degree.

14 Q. U S M being University of Southern
 15 Mississippi?

16 A. Yes, ma'am.

17 Q. And after you finished college, where did
 18 you work?

19 A. Well, during my law school years, I
 20 worked here in Jackson at Legal Services Corporation
 21 from '73 to '80.

22 Q. Okay. So after college you started
 23 working for Legal Services?

24 A. During college and after college, I
 25 worked at Legal Services, Inc.

EXAMINATIONS

PAGE

Examination By Ms. Mallett 4

Examination By Mr. Thompson 116

EXHIBITS

PAGE

Exhibit 6 4

Exhibit 7 34

2 (Pages 2 to 5)

James Johnson, Esq. - 09-09-04

Page 42

2 Q. And you believe it's accurate?
 3 A. Uh-huh. (Affirmatively), yes, ma'am.
 4 Q. In paragraph 44 of the complaint, I think
 5 it generally states that . . . was repeatedly
 6 uprooted; is that correct?
 7 A. Right.
 8 Q. Do you have any idea what impact the
 9 frequency of her placement as described in the
 10 complaint has had on her?
 11 A. I don't have any idea what impact it had
 12 on her. I can guess that being moved five times in
 13 five weeks wasn't healthy, but I can't look at her
 14 psyche and figure out what she's thinking.
 15 Q. Now are you aware of or have you seen any
 16 medical or professional reports that have concluded
 17 that she was negatively affected because of the
 18 number of times that she was moved around?
 19 A. I have not seen anything like that.
 20 Q. Did you bring this issue of her being
 21 moved around as the complaint described, did you
 22 bring this as an issue to Judge MacPhail, as a
 23 concern?
 24 A. No, because it was moot in that by the
 25 time we got to her case, she was settled in the
 Raney home. These movements occurred between her

Page 44

1 seeking an explanation as to why.
 2 Q. Okay?
 3 A. So complaint only because we needed an
 4 explanation. I mean, I couldn't complain --
 5 Q. So you brought the issue up to Judge
 6 MacPhail?
 7 A. Correct.
 8 Q. And what was his, what did he do in
 9 response to you?
 10 A. Had a five-day hearing.
 11 Q. On ?
 12 A. On her case, trying to get the D H S
 13 workers whose names I gave earlier, who played what
 14 role in doing this that is described in --
 15 Q. In the complaint?
 16 A. Yeah, paragraphs 43 through 49.
 17 Q. So Judge MacPhail had the authority to
 18 look into these complaints that you -- let me finish
 19 my question, these complaints that you were alleging
 20 in regards to Olivia?
 21 A. Well, yeah, he didn't. It wasn't sue
 22 sponte. He had the prosecutor reopen the case and
 23 she asked for a review, Ms. Castle.
 24 Q. Ms. Castle?
 25 A. She's the county prosecutor.

Page 43

1 being taken and the Judge having her case heard.
 2 Q. So by the time that you had her review
 3 before Judge MacPhail, you felt as her guardian ad
 4 litem, that she was in a safe place?
 5 A. Correct.
 6 Q. And you did not bring up to the judge any
 7 concerns that she might be moved again?
 8 A. No, because that issue didn't come up.
 9 Because the Raney's testified that they were willing
 10 to take her as long as the court wanted them to.
 11 Q. Now how many times did the Raney's have
 12 Olivia ?
 13 A. It would be a guess. I know they've had
 14 her consistently for a number of months. But during
 15 these five moves, they may have had her for like an
 16 overnight or something when they were trying to find
 17 a placement. But I'm not certain, I can't remember.
 18 Q. So by the time that you all had the
 19 review, the last review, you were not concerned that
 20 D H S was going to move her again?
 21 A. Correct.
 22 Q. And you didn't voice any complaint about
 23 the frequency of her moves at the last hearing?
 24 A. Yes. Not to the extent that we could do
 anything about it because it was over, but we were

Page 45

1 Q. So there was a proceeding held before
 2 Judge MacPhail on this case?
 3 A. Yes, ma'am.
 4 Q. And during that proceeding, you discussed
 5 or there was a discussion or request for explanation
 6 as to why ? had been moved?
 7 A. Correct.
 8 Q. And there was a discussion regarding why,
 9 about the assessments that she did or did not have;
 10 is that correct?
 11 A. Correct.
 12 Q. And any conduct regarding Department of
 13 Human Services that you had a complaint about or had
 14 some concerns about was dealt with in this hearing;
 15 is that correct?
 16 A. Most of them, yeah. We didn't get
 17 answers, but we tried to deal with them.
 18 Q. This was a proceeding where you could
 19 bring up those issues?
 20 A. Correct.
 21 Q. Okay. And did Judge MacPhail make any
 22 kind of orders regarding the medical assessment?
 23 Did he direct D H S to go out and get any sort of
 24 particular type of medical or psychological
 25 treatment for ?

12 (Pages 42 to 45)

James Johnson, Esq. - 09-09-04

Page 46

1 A. Not that I'm aware of, but I don't know.
 2 Q. Did he make any orders in regards to
 3 placement, any further placement of Olivia?
 4 A. Well, again, I don't believe the issue
 5 came up since the Raney's were willing to keep her.
 6 And it was everybody's agreement that she was in a
 7 secure foster placement and she didn't need to be
 8 moved, so it didn't really come up.
 9 Q. What about termination of parental
 10 rights, was that discussed?
 11 A. Yes.
 12 Q. What was the conclusion on that?
 13 A. It was mixed. Some wanted to T P R the
 14 mother and the father and others wanted to give them
 15 a second chance. And I think officially, they're
 16 still in the reunification mode.
 17 Q. What was the judge's order in regards to
 18 termination of parental rights or pursuing
 19 termination of parental rights?
 20 A. He didn't direct the county attorney
 21 either way. He just directed the county attorney to
 22 work with the Department. My understanding is that
 23 they are looking at T P R.
 24 Q. So you understand that?
 25 A. It hasn't been filed that I'm aware of.

Page 48

1 hearing? What orders did the judge make regarding
 2 ?
 3 A. Well, the hearing was really more to find
 4 out how all of this happened. He basically just
 5 left her in the Raney home and asked the Department
 6 to, you know, monitor her situation.
 7 Q. Did he issue any sort of punishment for
 8 the Department of Human Services? Hold anybody in
 9 contempt or something like that?
 10 A. No, I can't remember. I mean, we really
 11 didn't get to the bottom of it to be quite frank
 12 with you.
 13 Q. So as I understand, you just had this
 14 proceeding before Judge MacPhail regarding
 15 that brought up these issues that you're talking
 16 about in the complaint. And at the end of the day,
 17 there was no conclusion as to whether D H S had done
 18 anything wrong in regards to ?
 19 A. I think there was conclusion in the
 20 court's mind that it was not handled correctly. But
 21 the court could not find anybody within the
 22 Department that would give the court the information
 23 regarding how this happened. Everybody was saying,
 24 "I don't know or ask so and so or check with so and
 25 so."

Page 47

1 Q. In preparation for this hearing that you
 2 had, what was the, what prompted this proceeding
 3 before Judge MacPhail regarding ?
 4 A. Well, I don't know what prompted it.
 5 Everybody kept coming back to a memo letter that was
 6 faxed to the court from Hope Haven about her
 7 physical condition and complications with her
 8 physical condition. And that, I guess, kind of was
 9 the red flag that everybody started looking at.
 10 That's my understanding -- now, I don't know what
 11 Ms. Castle, what triggered her or what triggered
 12 Judge MacPhail or whatever, but that's what my, my
 13 role as guardian ad litem triggered by interest in
 14 it.
 15 Q. Now as the guardian ad litem, when these
 16 proceedings are initiated, do you go out and do an
 17 independent investigation regarding Olivia or do you
 18 just read the reports that are coming in from the
 19 prosecutor or from D H S?
 20 A. Most of the time, reading reports from D
 21 H S and the prosecutor. In her case, I did have
 22 some contact with Hope Haven people and Mr. Raney,
 23 just to maybe corroborate, you know, what I was
 24 hearing was in fact true and accurate.
 25 Q. What was the final conclusion of this

Page 49

1 Q. So nobody at the Department of Human
 2 Services, the judge didn't hold anybody at the
 3 Department of Human Services liable for anything?
 4 A. Correct. He had a lot to say in his
 5 closing remarks, but as far as an adjudication
 6 disposition of anything, no.
 7 Q. As your statutory, as a guardian ad
 8 litem, some of your statutory duties would include
 9 you can make recommendation to the judge; is that
 10 correct?
 11 A. Correct.
 12 Q. And you can do reports, enter reports?
 13 A. Correct.
 14 Q. And you can institute the type of
 15 proceedings that you were just describing; is that
 16 correct, on behalf of minor children?
 17 A. Correct, uh-huh. (Affirmatively).
 18 Q. Have you made a determination of whether
 19 parents' rights should be terminated?
 20 A. Legally, no. She'll make two steps
 21 forward and then she'll drop back, the mother. The
 22 father is pretty much, he hasn't signed away his
 23 parental rights but he's not fighting for them. The
 24 mother is. But Judge MacPhail and also D H S really
 25 give the parents a lot of time to try to get their

13 (Pages 46 to 49)